

1 Tanya D. Dennis
2 2027 Woolsey Street
3 Berkeley, CA 94703
4 (510) 638-2077

FILED

DEC 14 2010

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

10 TANYA D. DENNIS,

11 Plaintiff, Pro Per

12 vs.

13 WELLS FARGO BANK, N.A., ALSO KNOWN
14 AS WACHOVIA MORTGAGE, A DIVISION OF
15 WELLS FARGO BANK, N.A., AND
16 FORMERLY KNOWN AS WACHOVIA
17 MORTGAGE, FSB, FORMERLY KNOWN AS
18 WORLD BANK SAVINGS BANK, FSB., and
19 JOHN AND JANE DOES 1-5

20 Defendants

) Case No.: C10-01596CW(LB)

) **EXHIBIT: FINAL FORENSIC LOAN
AUDIT**

) **PLAINTIFF'S AFFIDAVIT IN
OPPOSITION TO
DEFENDENT'S MOTION FOR
SUMMARY JUDGMENT
BASED UPON FIFTEEN
MATERIAL FACTS IN DISPUTE**

) Judge Claudia Wilken

21
22 **Plaintiff, Tanya Dennis submits for entry the final forensic loan audit completed by**
23 **Certified Forensic Loan Auditors LLC.**

24 **Respectfully Submitted,**

25 
26 **Tanya Dennis**

12/14/10

12/14/10

14



Certified Forensic Loan Auditors

CERTIFIED FORENSIC LOAN AUDITORS, LLC

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PROPERTY SECURITIZATION MEMORANDUM™

Prepared for:

Prepared on behalf of:

**Tanya D. Dennis
2027 Woolsey Street
Berkeley, CA 94703**

Disclosure: You have engaged Certified Forensic Loan Auditors, LLC to examine your real estate documents. This information is not to be construed as legal advice or the practice of law, pursuant to Business and Professions Code § 6125 et seq, it is the intent of CFLA, its members, auditors and independent contractors, not to engage in activities that could be considered the practice of law by conduct exhibiting any of the following practices: "...the doing and/or performing of services in a court of justice in any matter depending therein throughout the various stages and in conformity with the adopted rules of procedure. It includes legal advice and counsel and the preparation of legal instruments and contracts by which the legal rights are secured although such matter may or may not be depending in a court."

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SECTION 1: TRANSACTION DETAILS

BORROWER & CO-BORROWER:

BORROWER	CO-BORROWER
Tanya D. Dennis	N/A
CURRENT ADDRESS	SUBJECT ADDRESS
2027 Woolsey Street Berkeley, CA 94703	2027 Woolsey Street Berkeley, CA 94703

Transaction Participants

MORTGAGE BROKER:	MORTGAGE SERVICER:	MORTGAGE NOMINEE BENEFICIARY:
Unknown	World Savings, Bank Wachovia (now)	World Savings Bank
ORIGINAL MORTGAGE LENDER TABLE FUNDER:	MORTGAGE TRUSTEE:	TITLE COMPANY:
World Savings Bank	Golden West Savings Association Service, Co.	Unknown



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Loan Transaction Summary

FIRST MORTGAGE

Close Date	October 6, 2006	Starting Interest Rate:	6.024%
Loan Amount	\$25,000	Starting Mortgage Payment	Unknown
Occupancy:	Unknown	Transaction Type:	Equity Line of Credit
Loan Program:	Unknown	Loan Number:	0044170751

SECTION 2: SECURITIZATION

The Securitization Process

Securitization was the process whereby mortgage loans were turned into securities, or bonds, and sold to Investors by Wall Street and other firms. More specifically, the loans are "sold" into a trust known as a special purpose vehicle (SPV) that holds the loans as collateral on the securities bought by the investors. These "sales" allow the lenders to move the loans off their books, eliminating the need to maintain capital-adequacy reserves against default. The purpose was to provide a large supply of money to lenders for originating loans, and to provide investments to bond holders which were expected to be relatively safe. A majority of mortgages created from 2001-2007 were securitized.

The procedure for selling of the loans was to create a situation whereby certain REMIC (real estate mortgage investment conduits, a common securitization vehicle for commercial vehicles) tax laws were observed, and whereby the Issuing Entity and the Lender would be protected from



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issues regarding either entity going into bankruptcy. The IRS treats residential real estate REMICS comparably with the 'reasonably foreseeable default' standard. For the bankruptcy protection, two "True Sales" of the loans had to occur, when loans were transferred to different entities.

A "True Sale" of the loan would be a circumstance whereby one party owned the Note, and then sold it to another party. An offer would be made, then accepted, with compensation given to the "seller" in return for the Note. The Notes would be transferred, and the Deeds of Trust "assigned to the buyers" of the Note, with an Assignment made every step of the way, and each Note endorsed to the next party.

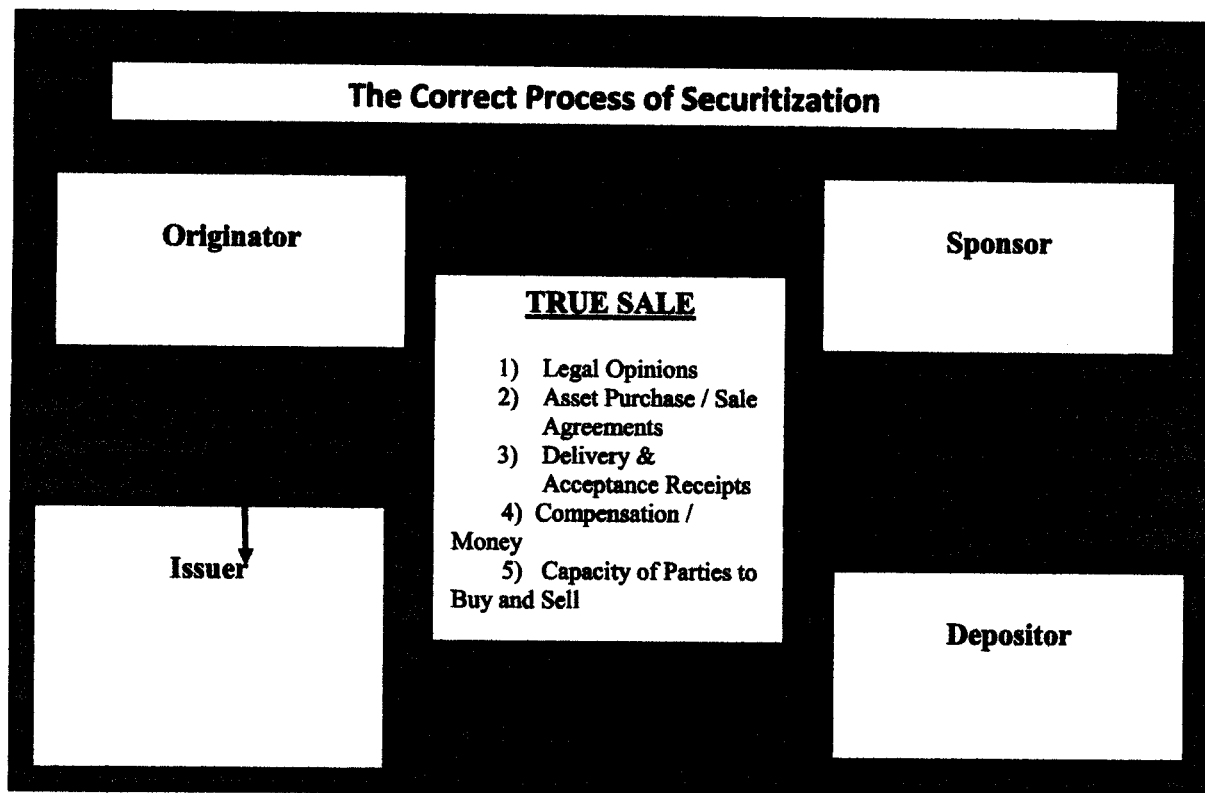
The parties involved:

- The Originator was the lender who funded the loan.
- The Sponsor "collected" or "bought" the loans from different lenders, combined them, and then "sold" the loans to the Depositor.
- The Depositor would "deposit" the loans into the Issuing Entity Trust, and then bonds and certificates would be sold.



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At least in theory, that is how the process would work. The diagram outlines this process.



The Reality

The “reality” of the securitization process was much different than projected.

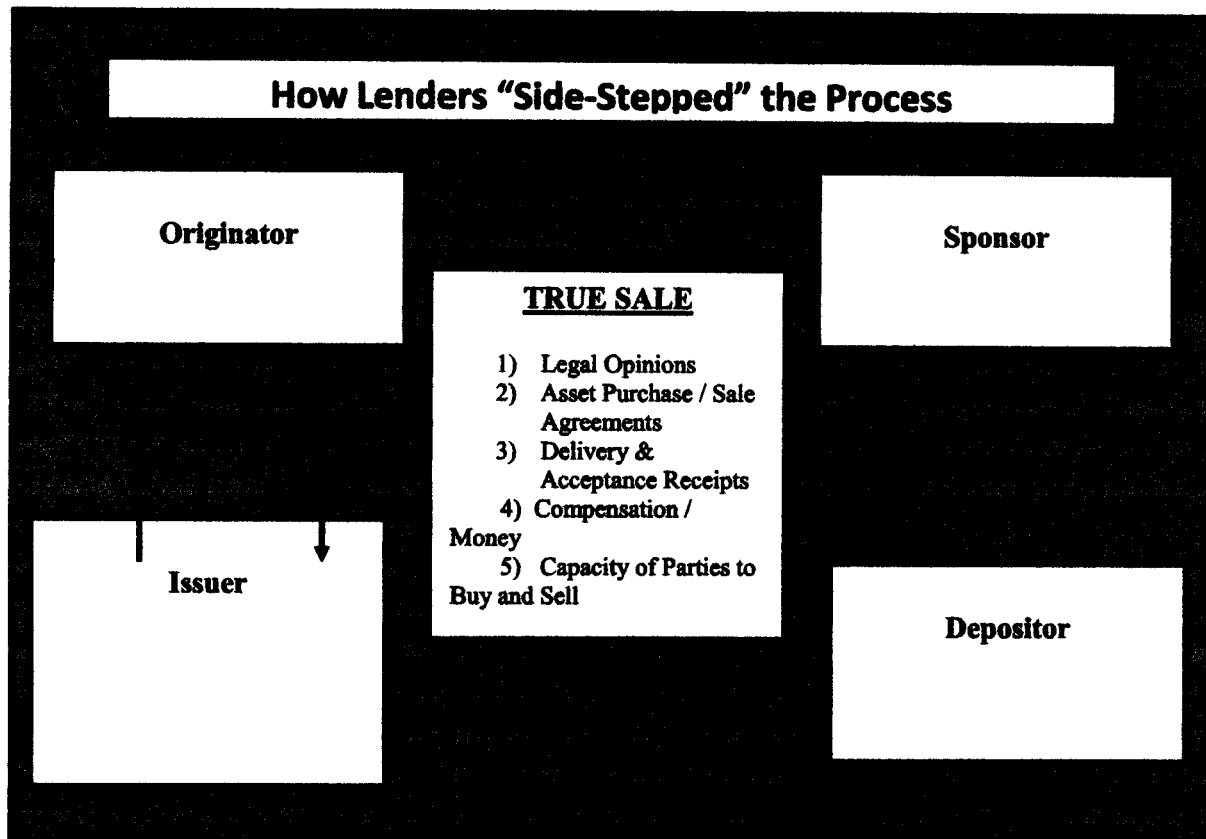
The money for the loans generally came from the Wall Street firm that was organizing the transaction. The firm provided money in the form of “Warehouse Lines of Credit” for each “lender” to use. The funds for the Warehouse Lines of Credit came mostly from two different sources.

- The Wall Street Firm, if large enough, could provide the money from its own accounts initially, but this was a practice not commonly used.
- The Wall Street firm “pre-sold” the Trust, selling the idea to other firms who put up the money and who then would be involved in different parts of the transaction such as typically selling the certificates and bonds to private Investors.
- The lenders were provided the money in Warehouse Lines of Credit.



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The lender was tasked with finding borrowers for the money. Lending standards were "tossed out the window" because each Trust had a certain time frame in which the money could be lent to borrowers, allowing the Trust to sell the Certificates and Bonds. As a result, almost anyone above 18 years old could "qualify" for some type of loan. Even if the person was without employment or income, there was a loan for him.



It now becomes readily apparent that the entire lawful process of Securitization was entirely subverted.

The Issues

Here are significant issues which concern the process:

- When the loan was sold to each entity, there were no Assignments of the Deed of Trust to



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any entity at the time of the sale. Therefore, "True Sales" could not occur despite there being required a perfected "Chain of Title" by most Pooling and Servicing Agreements (PSAs), though the Agreements try to make "allowances" for MERS loans. The Sponsor and the Depositor were "created" having no assets. Therefore, they were unable to "buy" or "sell" the loans for "True Sales" to occur.

- PSAs are contracts between the SPV and the loan servicers who process the payments and generally manage the loans. The servicers are contractually obligated to act in the interests of the investors.
- The selling of the loans from the lender to the Wall Street entity did not in fact occur. The Wall Street entity who created the Warehouse Line of Credit was in fact the "True Lender".
- The Originator of the loan simply funded from the "Warehouse Line" and simply acted as a "Table Funder".
- Again, no "True Sales" ever occurred, and as a result, there are questions as to the legality of the Trusts.
- No Assignments of Beneficiary or Endorsements of the Note to all entities in the transaction ever occurred, reinforcing the argument of no "True Sales" ever occurring. The endorsements are a requirement of the Pooling and Servicing Agreement.
- An Assignment of Beneficiary from the original lender only occurs upon default, and almost always after the Notice of Default is filed, which would mean that the Notice of Default may have defects in it.
- Now, Assignments of Beneficiary are being made to the Servicer and not the Trust, which would pose new issues for foreclosure because the Trust is not receiving the Deed despite the Trust's being the "beneficial interest" in the Note.
- The addition of MERS to the equation, as "Nominee for the Beneficiary" to try to get around the requirement of assigning Deeds of Trust, further "muddies the waters" of the transaction. Many courts are ruling that MERS has no ability to foreclose or make assignments, with Chase and EMC in 2007 and Washington Mutual in 2008 ceasing use of MERS in foreclosures. Most recently, as of May 1, 2010, MERS cannot be named as a plaintiff in any foreclosure action on a mortgage loan owned or securitized by Fannie Mae.



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Summary:

Examiners reviewed the documents provided for this loan. They note:

- The loan was originated by World Savings Bank, FSB, on June 14, 2007. World Savings did not sell its loans into securitization. Wachovia purchased World Savings Bank and shortly thereafter, in late 2008, Wells Fargo purchased Wachovia.
- Examiners were not provided the Note for review, so the subject loan type is unknown. World Savings Bank was known for its "Pick-A-Pay" loan. The New York Times reports in mid 2010 that over 70% of these loans are in California (along with Arizona and Florida). Colorado Attorney General John Suthers states in late 2010 that eight states will receive a total of \$23.7 million from Wells Fargo to settle allegations surrounding deceptive advertising and problematic lending practices involving these "Pick-A-Pay" loans offered by Wachovia and World Savings.
- In addition to paying damages and fees to the eight participating states, Suthers states that in the settlement, Wells Fargo agrees to provide loan modifications to borrowers either 60 days or more in delinquency or in danger of imminent default prior to June 30, 2013.
- California is not one of the eight states participating in the settlement with Wells Fargo are Colorado, Arizona, Florida, Illinois, Nevada, New Jersey, Texas and Washington.

Servicing Issues

Once a loan has been funded, servicing of the loan is the key element from that point. Servicing refers to the collection of the Monthly Payments for each mortgage, and as earlier noted, the general management of the loans. The servicers are contractually obligated to act in the interests of the investors via the Pooling and Servicing Agreement (PSA). However, in this case, Wells Fargo/Wachovia is both the secured party/noteholder and the Servicer.

The Servicer responsibilities include:

- Collect the monthly payments on each loan.



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- Keep accurate payment history records.
- Track payments and segregate the different Trusts for which the servicer collects.
- Make monthly payments to the Trusts.
- Engage in Collection Efforts for loans not being repaid.
- Attempt to resolve Collection Issues via loan modifications, forbearance, or other workout agreement tactics.
- Authorize Short Sales or Deed in Lieu of Foreclosure.
- Initiate Foreclosure Proceedings.

SECTION 3: FORECLOSURE

Foreclosure Summary

The following covers deficiencies in the foreclosure process.

Notice of Default

- Examiners were not provided the Notice of Default to review.



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Validation of Debt Letter

- Examiners were not provided a Validation of Debt Letter to review.

Substitution of Trustee

- A one-page Substitution of Trustee executed by Jennifer Victa and notarized by J. Archuleta, dated January 14, 2010, was provided for review.
- The Substitution of Trustee document states that the “undersigned hereby substitutes Cal-Western Reconveyance Corporation” as Trustees under said Deed of Trust. The “undersigned” is Jennifer Victa, who signed the document on behalf of Cal-Western Reconveyance Corporation as Attorney in Fact for Wells Fargo Bank, NA also known as Wachovia Mortgage, a division of wells Fargo Bank, N.A. and formerly known as Wachovia Mortgage FSB, formerly known as World Savings Bank, FSB.
- No documentation is known to exist which gives Cal-Western Reconveyance Corporation authority as Attorney in Fact for Wells Fargo Bank et al, nor is any documentation known to exist which gives Jennifer Victa signatory authority on behalf of Cal-Western Reconveyance Corporation.
- The Deed of Trust at Covenant 21 governs the Substitution of Trustee as follows:

Substitution of Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county where the Property is located.

- Without proper signatory authority, Cal-Western Reconveyance Corporation, appears to have appointed itself as Substitute Trustee, leaving Examiners to conclude that the Substitution of Trustee document is not compliant with the requirements of the Deed of Trust.



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Notice of Trustee's Sale

- The undated Notice of Trustee's Sale was provided for review. The document is not signed by any person or entity. Cal-Western Reconveyance Corporation is noted as the Trustee.

SECTION 4: DEFECTS AND DEFICIENCIES

Loan Process

- There were no significant loan documents for review.

Loan Modification

- Examiners were not provided with any information regarding any attempts at loan modification in particular or loss mitigation in general. As previously noted, if the subject loan were a Pick-a-Pay loan, Wells Fargo has established a hotline for homeowners with these loans to call 888-565-1422.

Securitization

- This loan was not Securitized. See Section 2: Securitization for a full explanation.

Foreclosure Process

- As noted, there is a question as to the validity of the appointment of Substitution of Trustee besides its questionable signatory authority. Examiners, as testifying experts,



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recognize potential fraudulent activity, which in this case would warrant review pursuant to state law via recovery for a claim of fraud or intentional misrepresentation. Federally, of course, Title VIII (Corporate and Criminal Fraud Accountability) of Sarbanes-Oxley Act Section 802 pertains to 'Criminal Penalties for Altering Documents'.

Douglas Rian, M.A.
Certified Forensic Loan Auditor

A handwritten signature in black ink, appearing to read 'Douglas Rian'.

DOUGLAS RIAN, M.A., CFLA

Elizabeth Jacobson
Certified Forensic Loan Auditor

A handwritten signature in black ink, appearing to read 'Elizabeth Jacobson'.

ELIZABETH JACOBSON, CFLA

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